

MGT 08-06

MEMORANDUM

To: Carolyn Williams, Director, Office of Supplier Diversity and Outreach

From: Allen Vann, Inspector General, Office of Inspector General

Date: March 16, 1998

Subject: Audit of Gator Guardrail, Inc. Minority/Woman Business Enterprise
(M/WBE) Certification -Audit # 98 -05

INTRODUCTION

This report presents the results of our audit of the Gator Guardrail, Inc. (Gator Guardrail) M/WBE Certification. Gator Guardrail received District M/WBE certification on November 8, 1995, for the business of installation of guardrail, sand cement riprap, fence and signs. Gator Guardrail's M/WBE certification is valid for three-years.

Our audit was performed pursuant to your request, dated February 23, 1998, to examine the firm's minority business status.

OBJECTIVE

The purpose of our audit was to determine if Gator Guardrail meets the criteria for M/WBE eligibility.

This audit was conducted pursuant to the Office of Inspector General's responsibilities and authority set forth in § 20.055 F.S. Our audit was conducted according to *Generally Accepted Government Auditing Standards* and included such tests of Gator Guardrail records and other auditing procedures we considered necessary under the circumstances. We also examined the financial records provided by Gator Guardrail for the period May 19, 1995, through August 1, 1996. We also interviewed the sole shareholder/owner of Gator Guardrail.

Our auditors did not discuss specific findings with the minority owner of Gator Guardrail. However, audit matters were discussed to the extent necessary to obtain a full understanding of the evidentiary documents furnished by the owner.

BACKGROUND

Ms. Lorraine Goff is the sole stockholder of Gator Guardrail, which was incorporated on May 19, 1995. On August 23, 1996, the firm was administratively dissolved as a corporation by the state of Florida for failure to file its annual report. Gator Guardrail is certified as a M/WBE with the City of West Palm Beach and Palm Beach International Airport but according to Ms. Goff was denied certification by the Florida Department of Transportation.

Ms. Goff is also a majority shareholder and President of Florida Guardrail, Inc. (Florida Guardrail) whose primary business is also guardrail installation, fencing, signage and riprap. Mr. Howard Goff, is also an officer of Florida Guardrail and owns the remaining shares.

Florida Guardrail was certified through April 30, 1997, as a M/WBE with the District. On April 21, 1997, Florida Guardrail applied for M/WBE recertification but was denied by the Office of Supplier Diversity and Outreach (SDO). The SDO determined that the evidentiary documents submitted with the recertification application did not demonstrate that the minority owner controlled either the firm's day to day operations, or that the minority owner possessed the authority to manage the firm.

Gator Guardrail is currently a subcontractor on three District projects. Florida Guardrail is a subcontractor on one District project; it was awarded this subcontract while certified as a District M/WBE. According to documents provided by the SDO, Gator Guardrail and Florida Guardrail are subcontractor under the following contracts:

Subcontractor	Contract Number	Execution Date	Subcontractor Award	Payments through February 1998
Florida Guardrail	C-7004	June 1, 1996	\$18,500	\$18,500
Gator Guardrail	C-E503	April 1, 1997	45,771	
Gator Guardrail	C-8006	Sept. 22, 1997	30,700	33,751
Gator Guardrail	C-E111	Nov. 4, 1997	15,300	
Total			\$110,271	\$52,251

The following table illustrates a chronological history of salient Florida Guardrail and Gator Guardrail events and activities as it relates to District M/WBE certifications and subcontract awards:

Dates	Gator Guardrail	Florida Guardrail
May 19, 1995	Gator Guardrail is incorporated with the state of Florida	
November 8, 1995	District certifies Gator Guardrail as a M/WBE	
June 1, 1996		Florida Guardrail is awarded a subcontract under contract # C-7004
August 1, 1996	Gator Guardrail closes its bank account	
August 23, 1996	The state of Florida dissolves Gator Guardrail as a corporation	
April 30, 1997		Florida Guardrail's M/WBE recertification is denied by District
April 1, 1997	Gator Guardrail is awarded a subcontract under contract # C-E503	
Sept. 22, 1997	Gator Guardrail is awarded a subcontract under contract # C-8006	
Nov. 4, 1997	Gator Guardrail is awarded a subcontract under contract # C-E111	

Criteria

The authority to conduct an examination of a M/WBE Application for Certification is described in the signed affidavit, which is included with the M/WBE Application. The affidavit states:

"... the undersigned agrees to provide the Certifying Agency with current, complete and accurate information regarding THIS APPLICATION, its attachments, or any project or contracts issued by the organizations or corporations utilizing the AGENCY for their own minority/women or disadvantaged business enterprise procurement and/or construction programs. The undersigned further agrees that, as part of this certification procedure, the AGENCY may freely contact any person or organization named in this application to verify statements made in THIS APPLICATION and/or secure additional information or data required to grant to, or withhold from, the applicant company certification as an MBE, WBE, or DBE. The undersigned understands and agrees that failure to submit required materials and/or to consent to interview(s), audit(s), and /or examination(s) will be grounds for immediate rejection of the application for certification or recertification."

In addition, authority to periodically review a firm's continued M/WBE eligibility is stated in the M/WBE Certification Approval letter issued by the District.

On May 24, 1991, the District issued MBE Certification Guidelines (the "Guidelines") which specify certification criteria. The criteria were established based on the standard definition for minority and woman-owned business enterprises as contained in the "Florida Small and Minority Business Assistance Act," [FS 288.703] and the District's Procurement and Contracting Policy. The Guidelines predate the October 1, 1996 adoption of M/WBE contracting rule 40E-7, Supplier Diversity and Outreach M/WBE Contracting Rule.

FINDINGS

Our assessment of Gator Guardrail's eligibility as a M/WBE firm according to specific elements of the District's Guidelines follows:

Minority Business Enterprise:

a minority business enterprise is a small business concern which is domiciled in Florida and which is at least 51 percent owned by minority persons and whose management and daily operations are controlled by such persons.

Gator Guardrail is domiciled in Florida and owned by a minority person.

Minority Persons:

permanent residents of Florida who are members of minority groups as noted in Sections 288.702 and 288.703, Florida Statutes.

The Gator Guardrail owner and sole stockholder is a permanent resident of Florida and a member of a minority group.

Small Business:

an independently owned and operated business concern which employs 25 or fewer permanent full-time employees, and which has a net worth of not more than \$1 million.

Gator Guardrail falls within the definition of a small business.

Organized to engage in commercial transactions:

the applicant company must be organized to perform a commercially useful function according to the customs and practices within their respective industry. A business concern is considered to perform a commercially useful function if it assumes responsibility for the performance, management and supervision of a distinct

element of work on a contract and/or the business assumes the actual and contractual responsibility for the provision of materials and supplies.

Based on the M/WBE certification, Gator Guardrail's primary business is the installation of guardrail, sand cement riprap, fence and signs. We confirmed this with the Articles of Incorporation.

According to Gator Guardrail records, the company has had no business activities related to its commercially useful function.

Domiciled in Florida:

the applicant company's primary residence must be within the state of Florida.

According to the Articles of Incorporation, Gator Guardrail is domiciled in Florida.

Ownership, Management and Control:

the ownership and control by minorities and/or women shall be real, substantial and continuing and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents. The minority and/or woman owner shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests as demonstrated by the substance rather than the form of arrangements. All securities which constitute ownership and/or control of a corporation for purposes of establishing it as an MBE shall be held directly by minorities and/or women.

The contributions of capital or expertise by the minority and/or woman owner to acquire their interest in the firm shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its owners who are not MBE's or the mere participation as an employee, rather than a manager.

Our examination of financial records, corporate filings with the state of Florida and discussions with the owner, indicate that the owner and sole stockholder's management and control of business activities is not real, substantial and continuing. Nor does the sole owner appear to "enjoy the customary incidents of ownership . . ." Documentation supporting this finding follows.

As described earlier, the firm was administratively dissolved as a corporation by the state of Florida for failure to file its annual report. In addition, an examination of the banking records indicated that Gator Guardrail closed its bank account in August 1996 even though the firm is a subcontractor to perform work under a District contract. Our review of two payments made to Gator Guardrail under a District contract revealed that one check was deposited in a Florida Guardrail account and the other in an investment account. In our initial letter for corporate documents, we requested copies of Gator Guardrail corporate tax returns. Ms. Goff explained that there were no corporate tax returns.

These actions indicate that the minority owner has not provided the necessary resources or dedication for Gator Guardrail to continue as an independent going concern.

Independence and Control:

An eligible minority business shall be an independent business. In determining this, the District shall consider the date the business was established, tax returns, the adequacy of its resources, and the degree to which financial, equipment leasing, and other relationships with non-minority firms vary from industry practice.

Gator Guardrail and its owner have a significant business relationship with Florida Guardrail (a non-M/WBE). Both firms operate in a parallel business and under common ownership. Discussions with the owner and our review of Gator Guardrail's revenues and other transactions, May 19, 1995 through August 1, 1996, (the period records were available) revealed that the majority of Gator Guardrail business activities involved Florida Guardrail. We found that:

- The owner of Gator Guardrail occupies space in an office building leased to Florida Guardrail. No rent payments to Florida Guardrail for the space were noted in the bank records.

- Gator Guardrail has no employees; Ms. Goff is the sole employee. In addition, it has no assets. The minority owner stated that she has used and will use Florida Guardrail employees and equipment to perform Gator Guardrail subcontracts. She explained that two subcontracts awarded to Gator Guardrail were performed by Florida Guardrail. Ms. Goff stated that she had a medical condition during this period, which precluded her firm from performing under the subcontract. However, Gator Guardrail has not provided any evidence to indicate that it possesses the resources necessary to perform as an independent M/WBE subcontractor.
- In a statement of intent to perform as a M/WBE subcontractor dated February 7, 1998, Ms. Goff reports Gator Guardrail's net worth as \$1.5 million and having 19 full-time employees. Since Gator Guardrail has no net worth or employees, it appears that Ms. Goff's intends to utilize Florida Guardrail employees and resources.
- Florida and Gator Guardrail are jointly named on a certificate of liability insurance.
- Ms. Goff explained that when the Chief Estimator for Florida Guardrail terminated his employment, she filled in until a replacement was hired, thus leaving her responsibilities at Gator Guardrail.

In summary, Gator Guardrail has no assets and employee payroll to support a commitment and investment in this company. On the other hand, Florida Guardrail, a similar business in which Ms. Goff is majority owner, had net assets of \$212,512 at December 31, 1995, and according to documents provided by Gator Guardrail, nineteen employees. It is our assessment that Gator Guardrail is not separate and independent of Florida Guardrail and depends heavily on Florida Guardrail's resources.

Day-to-Day Management:

The minority and or woman owner shall possess the power or cause the direction of the management and policy of the firm to make day-to-day, as well as major decisions on matters of management, policy and operations. The minority/woman business enterprise shall not be subject to any formal or informal restrictions which limit the customary discretion of the minority and/or woman owner. There shall

be no restrictions through by-law provisions or other provisions for cumulative voting rights or otherwise that prevent the minority or woman owner from making business decisions for the firm.

As a result of Ms. Goff's ownership interest in both Gator Guardrail and Florida Guardrail, it is our opinion that the decision making process and day to day management of Gator Guardrail is not independent of Florida Guardrail.

CONCLUSION

Based on our findings, we conclude that Gator Guardrail does not meet the eligibility standards for M/WBE certification.

Gator Guardrail does not possess the independent financial resources necessary to successfully perform contracted work without dependence on Florida Guardrail's (a non-M/WBE) assets, employees, and overall financial capabilities.

RECOMMENDATIONS

1. The Office of Supplier Diversity and Outreach should initiate action to decertify Gator Guardrail as a M/WBE.

The Office of Supplier Diversity and Outreach concurs with our recommendation and agreed to initiate its implementation. The Office of Inspector General in consultation with the Office of Counsel and Office of Supplier Diversity and Outreach will determine what further actions are warranted under the circumstances.

c: Samuel E. Poole
Michael Slayton